



::आयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क::  
O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE

द्वितीय तल, जी एस टी भवन / 2<sup>nd</sup> Floor, GST Bhavan  
रेस कोर्स रिंग रोड / Race Course Ring Road  
राजकोट / Rajkot - 360 001

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सत्यमेव जयते

रजिस्टर्ड डाक ए.डी.द्वारा :-

क	अपील / फाइलसंख्या/ Appeal / File No. V2/55/BVR/2019	मूल आदेश सं / O.I.O. No. 02/AC/BVR-2/BVR/NS/2019-20	दिनांक/ Date: 4/25/2019
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ख अपीलआदेशसंख्या(Order-In-Appeal No.):

**BHV-EXCUS-000-APP-020-2020**

आदेश का दिनांक/ Date of Order:	29.04.2020	जारी करने की तारीख / Date of issue:	29.04.2020
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श्री गोपी नाथ, आयुक्त (अपील्स), राजकोट द्वारा पारित /  
Passed by Shri Gopi Nath, Commissioner (Appeals), Rajkot

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु एवं सेवाकर,  
राजकोट / जामनगर / गांधीधाम द्वारा उपरलिखित जारी मूल आदेश से सृजित: /  
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise/ST / GST,  
Rajkot/Jamnagar/Gandhidham :

घ अपीलकर्ता & प्रतिवादी का नाम एवं पता / Name & Address of the Appellant & Respondent :-

**M/s. Guru Ashish Ship Breakers, UB Aggarwal House, 2291/2292-A/1, Hill Drive, Bhavnagar-364001.**

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है।/  
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

(A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है। /

Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर.के. पुरम, नई दिल्ली, को की जानी चाहिए। /

The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- ३८००१६ को की जानी चाहिए। /

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2<sup>nd</sup> Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para-1(a) above

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा। /

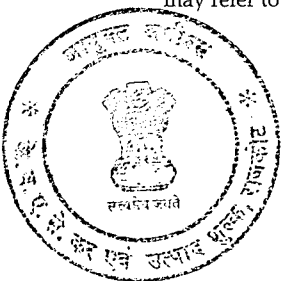
The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/- / Rs.5000/- / Rs.10,000/- where amount of duty demand/ interest/ penalty/ refund is upto 5 Lac., 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-.

(B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमावली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकती है एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा। /

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fee of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of the Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-.



- (i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। /  
The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.
- (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जमाना विवादित है, या जमाना, जब केवल जमाना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।  
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है  
(i) धारा 11 डी के अंतर्गत रकम  
(ii) सेनवेट जमा की ली गई गलत राशि  
(iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम  
- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं० 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगा।/  
For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores,  
Under Central Excise and Service Tax, "Duty Demanded" shall include :  
(i) amount determined under Section 11 D;  
(ii) amount of erroneous Cenvat Credit taken;  
(iii) amount payable under Rule 6 of the Cenvat Credit Rules  
- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.
- (C) **भारत सरकार को पुनरीक्षण आवेदन :**  
**Revision application to Government of India:**  
इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। /  
A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:  
(i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में।/  
In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse  
(ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छूट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। /  
In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.  
(iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। /  
In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.  
(iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो छूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं० 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समयावधि पर या बाद में पारित किए गए हैं।/  
Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.  
(v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए। /  
The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.  
(vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए।  
जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए।  
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.  
(D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिए। इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various numbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filed to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.  
(E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-I के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए। /  
One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs.6.50 as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.  
(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है। /  
Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.  
(G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट [www.cbec.gov.in](http://www.cbec.gov.in) को देख सकते हैं। /  
For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website [www.cbec.gov.in](http://www.cbec.gov.in)



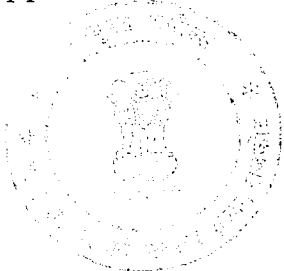
**:: ORDER IN APPEAL ::**

**M/s. Guru Ashish Ship Breakers Pvt., Plot No. 128, Ship Breaking Yard, Alang, Bhavnagar** (herein after referred to as **"Appellant"**) filed present appeal against Order-in-Original 02/AC/BVR-2/NS/2019-20 dated 25.04.2019 passed by the Deputy Commissioner, Central GST, Division, Bhavnagar-2, (hereinafter referred to as **'the adjudicating authority'**):-

2. The brief facts of the case are that audit conducted by the department observed that during the period from December-2012 to January-2014, the appellant had collected an amount of Rs. 4,36,63,115/- towards Transportation charges from the consignee during the F.Y 2011-12, 2012-13 and 2013-14 and had not paid service tax amounting to Rs. 12,69,250/- on the abovesaid income. Hence, the proceedings were initiated by issuance of Show Cause Notice dated 21.01.2016 demanding Service Tax amounting to Rs. 12,69,250/- under Section 73(1) of the Finance Act, 1994 along with interest and proposing imposition of penalties on the appellant under the relevant provisions of the Finance Act, 1994 (hereinafter referred to as **'the Act'**). Upon adjudication of the said show-cause notice, the adjudicating authority confirmed the demand along with interest, penalty under Section 77(1)(a) and Section 77(2) of the Act and also imposed equal amount of penalty under section 78 of the Act on the appellant in the impugned order.

3. Being aggrieved with the impugned order, the appellant preferred the instant appeal, *inter-alia*, on the various grounds as under:

3.1. That they have not paid transportation charges for their consignment sale but their consignment agent paid service tax after sale of the goods; that as per the agreement they issued a consignment note in which they were collecting the expenses done for the sale of goods from the sale price of the goods; that the said expenses also included the freight paid by them and service tax paid by them and the same was shown by them in the consignment note; that as per the prevailing practice, the appellant recorded full sale price as their sale income and recorded the



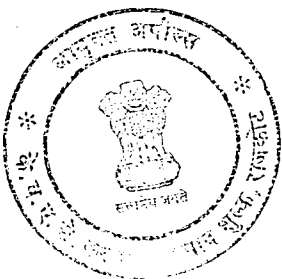
*A*

expenses made by their consignment agent, which were reimbursed by the appellant to them under the various head of their expenses; that the transportation charges were shown in their invoice to arrive at the value on which CENVAT is to be paid as they have sold the goods on consignment basis; that as per Rule 5 of the Central Excise (Valuation) Rules, 2000 the freight from factory to the depot shall be included in the assessable value and accordingly they have shown transportation charges separately in the invoice to arrive at the assessable value for the sale of consignment sale; that as per Rule 2(1)(d)(B) of the Rules, the service tax is required to be paid by the person who pays the freight either himself or through his agent; that they did not directly pay the freight to the transporter and only amount paid by their consignment agent was reimbursed, therefore service tax was required to be paid by the consignment agent and they have also paid the service tax which was reimbursed by them.

3.2 That the revenue cannot invoke extended period of limitation, when the records of the appellant were audited by the offices once and did not find any short-payment from records; that as service tax was being paid by the consignment agent and the appellant need not pay it again therefore, penalty cannot be imposed upon them; that mere detection does not mean non-payment with an intention to evade payment of service tax, therefore they have requested to grant immunity from penalty.

3.3 That the issue involved is that of interpretation of law, hence, extended period cannot be invoked; that the said SCN is time barred, therefore, the impugned order is not sustainable on ground of limitation also; that in matter of interpretation of law, no *means rea* can be alleged, therefore, imposition of penalty is liable to be set aside.

3.4 The appellant filed a miscellaneous application for condonation of delay and submitted that they could not file the appeal within 60 days; that to deposit the pre-deposit amount under Section 35F of the CEA, 1944, the appellant had applied for service tax registration and it took a long time to obtain the same as new systems on ICEGATE was introduced in place of earlier systems of service tax; that their consultant being a



Chartered Accountant firm were busy with various appellate authorities of CBEC during March to April-2019 and thereafter drafting of large number of appeals in the months of April to July- 2019, therefore, they could not file the appeal on time; that they received the impugned OIO on 22.05.2019 and filed the present appeal 30 days late and hence prayed to condone delay of 30 days.

4. Personal Hearing in the matter was attended by Shri M.N. Vadodariya, Consultant on behalf of the Appellant. He reiterated the submissions of appeal memo and also filed additional submission dated 30.01.2020 for consideration.

4.1. That the Show Cause Notice is time barred and subsequently the impugned order is also void and bad in law; that the department was fully aware of the activities and if the department was of the opinion that they had not paid the service tax on the transportation charges borne by them and shown in their Profit & Loss Account, it should have either advised them to pay the service tax or should have proceeded to take action against them within the normal period of limitation. They relied on the following orders:

- (i) Rama Paper Mills Vs CCE, Meerut – 2011 (22) STR (19) (Tri.-Del.)
- (ii) Crescent Shipping Agency (India) Ltd. -2012(28) STR (66) (Commr. Appl.)

4.2 That they have neither suppressed the facts willfully nor with intent to evade tax, therefore no penalty should be imposed on them.

5. I have carefully gone through the facts of the case, the impugned order, both appeal memorandum and additional submission made by the appellant at the time of personal hearing. I find that the appellant has filed an application for condonation of delay of 30 days in filing the appeal, that to deposit the pre-deposit amount under Section 35F of the CEA, 1944, the appellant had applied for service tax registration and it took a long time to obtain the same as new systems on ICEGATE was introduced in place of earlier systems of service tax; that their consultant being a Chartered Accountant firm were busy with various appellate authorities of



CBEC during March to April-2019 and thereafter drafting of large number of appeals in the months of April to July- 2019, therefore, they could not file the appeal on time; that they received the impugned OIO on 22.05.2019 and filed the present appeal 30 days late and hence prayed to condone delay of 30 days.

I find that the appellant received the impugned OIO on 22.05.2019 and filed the present appeal 30 days late i.e on 22.08.2019 and hence prayed to condone delay of 30 days.

I find that the appeal has been filed beyond the stipulated period of **sixty days** from the date of receipt of the impugned order. The appellate authority has, in terms of Section 85 of the Finance Act, 1994, power to condone delay in filing appeal maximum up to further **thirty days**, albeit on reasonable cause being shown. The present appeal has been filed within the stipulated time limit of **ninety days** i.e 90 days (60 days + 30 days) provided under the statute. I find justice in the reason for delay and as the delay is within the limit of 30 days allowed under law. I, condone the delay of 30 days in filing of Appeal and proceed to decide the Appeal on merits.

5.1 The issue to be decided in the present appeal is whether the appellant is liable to pay Service tax on transportation charges collected by them from their consignee or not.

6. In this case, I would first find it relevant to discuss whether the appellant is liable to pay service tax on GTA services or not. Therefore, I would like to reproduce Rule 2(1) (d) (B) of the Service Tax Rules, 1994 which reads as under:

**“Rule 2. Definitions. -**

1 .....

**(d) “person liable for paying service tax”, -**

(i) *in respect of the taxable services notified under sub-section (2) of section 68 of the Act, means, -*

(A) .....

**(B) In relation to service provided or agreed to be provided by a goods transport agency in respect of transportation**

*A*



**of goods by road, where the person liable to pay freight is, -**

- (I) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);
- (II) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;
- (III) any co-operative society established by or under any law;
- (IV) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder;
- (V) any body corporate established, by or under any law; or
- (VI) any partnership firm whether registered or not under any law including association of persons;

**any person who pays or is liable to pay freight either himself or through his agent for the transportation of such goods by road in a goods carriage :**

6.1 On plain reading of the above Rules, it is clear that Service Tax on GTA Services are required to be paid by the person who pays or is liable to pay freight either himself or through his agent for the transportation of such goods by road in goods carriage. As per the invoices issued by the appellant for selling their goods, freight charges have been shown separately which means that the appellant or his agent has paid freight charges to the GTA. Thus, I am of the view that the appellant is the person liable to pay Service Tax on freight charges paid by them to GTA as per the provisions of Rule 2(1)(d)(B)(I).

6.2 I note that the audit team on scrutiny of the documents viz. sale notes, invoices etc. has observed that appellant or his agent has paid the freight charges to GTA as per the invoices. Further, the consignment note issued by their agent also shows that they had deducted the freight charges as expenditure on sale of goods supplied by the appellant which proves that they have recovered the freight charges from the appellant.

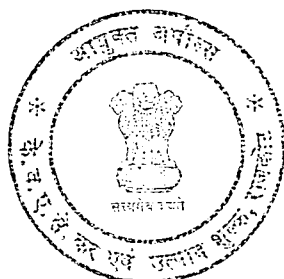


Thus, for charging of Service Tax on the freight charges, the person liable to pay service tax is the person who pays the freight charges. In the instant case, the appellant is the person who is liable to pay service Tax on the freight charges.

6.3 I find that after careful scrutiny of the documents, consignment sales note, invoices etc. for the relevant period the audit team found that the appellant's consignment agent issued consignment sales note which clearly shows that the transportation charges have been deducted by the Consignment Agent from the sales proceedings received from the buyer of goods. Thus, the consignment agent has deducted the said transportation charges from the amount to be paid by the appellant against the sale of the said consignment. This clearly shows that the appellant had eventually borne the transportation charges and paid it to the transporter through their agent. Therefore, the appellant was liable to pay service tax on the transportation charges paid to the GTA through their appointed Consignment Sale Agent.

6.4 Further, I also find that the above provisions very categorically provides that "person who pays or is liable to pay freight **either himself or through his agent**". Thus, it proves that the transportation charges were not paid by the consignee but the appellant only. Thus, I hold that the appellant was the person liable to pay service tax under GTA Services in pursuance of the provisions of Rule 2(1)(d)(B) of the Service Tax Rules, 1994 and the consignment sale agent of the appellant was only the medium through which freight was paid and the same was reimbursed by the appellant.

7. I further find that the appellant has vehemently contended that extended period cannot be invoked as the department was very much aware of the activities. In this regard, I do not find any force in the argument of the appellant as I find that Rule 2(1)(d)(B) of the Service Tax Rules, 1994 is very clear that the liability of service tax lies upon the person who pays or is liable to pay freight. In the instant case, the appellant had collected freight so they should have paid freight to the GTA, and therefore the liability to pay Service tax lies upon the consignor



*a*



i.e the appellant. Further, if the appellant had any doubt about their service tax liability they could have asked for a clarification from the department. As the above facts came to light only after detailed scrutiny of documents by the audit, therefore, I find that suppression of facts and extended period has been rightly invoked in the impugned order.

8. I have gone through the case laws cited by the appellant and I find that issue involved in the case laws are not similar to the present case in view of the discussions above. Therefore, ratio laid down in the cited case laws is not squarely applicable to this case.

9. In view of the above, I hold that the Appellant is liable to pay service tax amounting to Rs. 12,69,250/- for the period from 2011-12 to 2013-14 under Section 72(1) of the Finance Act, 1994 along with interest. I find that the appellant is also liable for penalty under Section 77 and 78 of the Act as imposed by the adjudicating authority in the impugned order. I, therefore, uphold the impugned order and reject the appeal.

9.1 अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है ।

9.1 The appeal filed by the Appellant stand disposed off in above terms.

सत्यापित



अ. अ. अच्यर  
अधीक्षक (अपील्स)

*Nath*  
29/4/2020  
(GOPI NATH)  
Commissioner(Appeals)

By RPAD  
To

M/s. Guru Ashish Ship Breakers Pvt.,  
Plot No. 128, Ship Breaking Yard,  
Alang, Bhavnagar.

**Copy for information and necessary action to:**

- 1) The Chief Commissioner, GST & Central Excise, Ahmedabad Zone Ahmedabad for his kind information.
- 2) The Commissioner, GST & Central Excise, Bhavnagar Commissionerate.
- 3) The Assistant/ Deputy Commissioner, GST & Central Excise, Division-Bhavnagar-2.
- 4) Guard File.



